RAJESH KUMAR SONTEKE

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(Jail) C. J. P. R./I-91 CRA 1388 94 (2)

APPEAL OF PRISONER

Division Bench (Criminal)

1102 Name गोपाल

er's name तातूराम साहू, निवासी ग्राम- औराबाधा, थाना- लो रमी

ence जिला- बिलासपुर (म0प्र0) Age 26 वर्ष

enced to आजीवन कारावास on 7/9/1994

er Section 302 भा. द. वि. by न्यायालय सत्र न्यायाधीश, बिलासपुर के न्यायालय के चतुर्थ अति0 न्यायाधीश, बिलासपुर (म0प्र0)
सत्र प्रकरण क्र0 472/92

is explained to the prisoner that if he states he wishes to be represented by a legal itioner the appellate Court will not proceed with the case for seven days unless the practitioner appears earlier. If the legal practitioner does not appear within seven he may not heard at all. if the prisoner states that he does not wish to be repre-ed by legal practitioner the court may proceed at once with the case and will not bliged to give a hearing to any legal practitioner who should appear.

Date of Application for copy of Judgement xx

Date on which copy received 14/9/1994

Date on which Appeal sent /9/1994

Whether the prisoner wishes to be represented or not.

1102 Name गोपाल आ0 तातूराम साहू

fined in केन्द्रीय जेल Jail रायपुर (म0प्र0)

777 /विधि/ 94 Dated 16/9/1994 199

arded to the अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर (म0प्र0)

gether with a copy of judgement or order passed in the case for favour of smission to the proper Appellate court.

संलग्न :- सत्र प्रकरण क्रमांक 472/92
की मूल निर्णय प्रति।

Superintendent
केन्द्रीय जेल रायपुर (छ.ग.)

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no of Appeal to the Appellate court

Dated 199

warded to the

High Court of Madhya Pradesh
JABALPUR

(15)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 1388/94 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO AND & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1388 of 1994

Appellant : Gopal

Vs.

Respondent : State of Madhya Pradesh

Shri Shailendra Dubey, learned counsel for the appellant.
Shri U.N.S. Deo, learned Govt. Advocate for the respondent/State.

ORAL JUDGMENT
(29.08.2006)

Per L.C. Bhadoo , J

This appeal is directed against the judgment of conviction and order of sentence dated 7.9.1994 passed by IVth Additional Sessions Judge, Bilaspur in Session Trial No. 472/92 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing the murder of his father namely Tatu, sentenced him to undergo imprisonment for life.

2. Case of the prosecution in brief is that on 27.6.1992 at about 7.30 a.m. deceased Tatu asked the accused to give his shirt, who was inside the room

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA : 1389/94 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and when the accused did not give the shirt, deceased Tatu himself entered the room, on which accused Gopal all of a sudden attacked Tatu with axe on his head and other parts of the body, as a result of which Tatu fell down on the ground and succumbed to the injuries. Sonsai (PW-4), brother of the accused on seeing this asked the accused as to why he was doing this, the accused also rushed towards him and ran away from the place of incident. Sonsai called Paras. One Firanta also came there and after seeing the incident Firanta informed Juthel. Thereafter, all of them came there and saw the dead body of Tatu. Juthel went to the police station Lormi along with Kotwar and lodged the report of Ex.P/10. The villagers chased the accused and after some distance they were able to catch hold of him. Thereafter, the police came on the scene of occurrence, prepared the Panchanama (Ex.P/2) of the dead body of Tatu after giving notice (Ex.P/1) to the Panchas. The accused gave memorandum (Ex.P/4) regarding the weapon of offence i.e. axe and in pursuance of that the axe was taken into possession by the investigating officer under Ex.P/5. Bloodstained and plain soil was also taken into possession from the place of incident under Ex.P/6. One white shirt was also taken into possession from the place of occurrence under Ex.P/7. Clothes of the accused were taken into possession under Ex.P/8. The site plan (Ex.P/9)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1300/94 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	of the place of occurrence was prepared by Patwari. The dead body of Tatu was sent for postmortem examination to the Primary Health Centre, Lormi where Dr. A.K. Gupta (PW-9) conducted the postmortem on the body of Tatu and found as many as seven incised wounds and opined that the all the injuries were ante mortem in nature and caused by hard and sharp cutting object. The death was due to coma as a result of injury No. 1 to the brain. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Mungeli who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned IVth Additional Sessions Judge received the same on transfer for trial. 3. Prosecution in order to establish the charge against the accused/appellant examined nine witnesses. Statement of the accused under Section 313 of the Cr.P.C. was also recorded by the learned trial Court in which he denied the material appearing against him in the prosecution case and stated that he is innocent, his mental condition is not perfect and he did not know as to who murdered his father and he has been falsely implicated in the crime.	

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मामला क्रमांक CRA:1396/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Learned Additional Sessions Judge after hearing the arguments advanced by the Additional Public Prosecutor as also counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

5. We have heard Shri Shailendra Dubey, learned counsel appearing on behalf of the accused/appellant and Shri U.N.S. Deo, learned Govt. Advocate on behalf of the respondent/State.

6. Learned counsel for the appellant has not disputed the fact that the death of Tatu was homicidal in nature. Apart from this, from the evidence of Dr. A.K. Gupta (PW-9) and eyewitness Sonsai (PW-4), it is evident that the death of Tatu was as a result of injuries inflicted on his body with axe, therefore, it is established that the death of Tatu was homicidal in nature.

7. As far as merit of the case is concerned, at the outset learned counsel for the accused/appellant submitted that at the time of commission of crime in question the accused was suffering from unsoundness of mind i.e. insanity and in the fit of insanity he committed the crime in question, therefore, he is entitled for the benefit of Section 84 of the IPC. He further submitted that even

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मामला क्रमांक ..... CRA. 1388/94 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

though this plea was raised before the learned trial Court but the trial Court without appreciating the evidence available on record, rejected the plea of the defence.

8. On the other hand, Shri U.N.S. Deo, learned counsel appearing for the State/respondent supported the impugned judgment of the trial Court and argued that a bare perusal of the statement of the accused recorded under Section 313 of the Cr.P.C. goes to show that the accused gave the answers of the questions put to him very intelligently and therefore, it cannot be said that he was suffering from unsoundness of mind.

9. In order to appreciate the arguments advanced by the respective counsel it would be profitable to have a glance on the relevant provisions of Section 84 of the IPC and Section 105 of the Indian Evidence Act. To seek protection under Section 84 of the IPC, the onus is on the accused to establish that at the time of commission of offence he was suffering from unsoundness of mind. Section 84 contemplates that;

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is

मामला क्रमांक ...Cr.A.:.1360/194 **सन्** ~~200~~—

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Therefore, when a plea of legal insanity is set-up, the Court has to ascertain whether at the time of commission of offence the accused, under the supervening circumstances on account of unsoundness of mind, was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to the law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed and in order to ascertain whether the accused was suffering from unsoundness of mind as to be entitled to the benefit of Section 84 of IPC can only be established from the circumstances, which preceded, attended and followed the crime. In this connection, as per the provisions of Section 105 of the Evidence Act there is burden on the accused to discharge the same in order to claim benefit of Section 84 of the I.P.C. Section 105 envisages that;

> "When a person is accused of any offence, the burden of proving the existence of circumstances brining the case within any of the General Exceptions in the Indian Penal Code, 1860 or within

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मामला क्रमांक CRA:1388/94 **सन्** ~~200~~

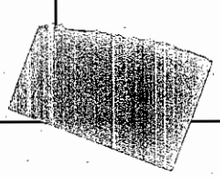
आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

The provisions of section 84 of IPC read with Section 105 of Evidence Act came up for consideration before the Hon'ble Apex Court in the Matter of **Dahyabhai Vs State of Gujrat** reported in **1964(7)SCR 361** and the Hon'ble Apex Court held that;

> "....Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. The burden of proof on the accused to prove the insanity is no higher than that rests upon a party to civil proceedings, which, in other words, means preponderance of probabilities...."



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मामला क्रमांक ..CRA/1389/94 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Court further held that doctrine of burden of proof in the context of plea of insanity may be stated in the following words:

(1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings:

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused

मामला क्रमांक ..... CRA : 1393/94 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on the ground that the general burden of proof resting on the prosecution was not discharged"

Therefore, the prosecution, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of Evidence act the burden of proving the existence of circumstances brining the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of such circumstances so probable that a prudent man' would act upon them. The accused has to satisfy the standard of a 'prudent man. If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden.

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मामला क्रमांक ..1309/94... **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. In the light of the above law laid down by the Apex Court we shall scrutinize the evidence of the present case.

11. As per the prosecution case the deceased was father of the accused, at the time of incident accused was sitting in the room, at that time the deceased asked the accused to give his shirt but when the accused did not respond, the deceased himself entered the room in order to take his shirt, on which the accused all of a sudden attacked him with axe without any rhyme or reason and that too, for seven times and inflicted seven incised wounds on the body of the deceased, as a result of which he fell down and died spontaneously. Therefore, this conduct of the accused shows that he assaulted his father without any reason. Apart from that, PW-1 Chowaram in his cross-examination has stated that "accused Gopal is a person of weak mind and he does not understand the consequence of his act". PW-3 Juthel Sahu who came to know about the incident from Firanta, has stated in his statement that accused Gopal is his nephew and when he came to know about the incident, he went to the house of Tatu and saw that his brother Tatu was lying dead and Gopal had fled away somewhere. Thereafter, he along with Bhagwat and Ganesh brought Gopal back from Narayanpur and lodged the report of Ex.P/10. In paragraph –

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मामला क्रमांक ...CRA/1308/94... **सन् 200—**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6 of his evidence he has stated that Gopal is a mad like person, he has no power to understand the consequences of his acts. PW-4 Sonsai, brother of the accused and son of the deceased, who witnessed the incident has stated in paragraph – 3 of his cross-examination that accused is his brother and he is a man of weak mind and since his childhood he is incapable of understanding the consequences of his acts. He has further stated that as and when the accused got infuriated, he used to start beating anybody and whenever he was overpowered by the fit of insanity, he used to pick up any thing and assault with the same anybody. In paragraph – 6 he has stated that Gopal was treated for his mental ailment but it could not be cured. Similarly, PW-5 Jhammibai, the wife of the deceased has also corroborated the evidence of PW-4 Sonsai and stated that Gopal became mad and to get him treated they had already spent Rs.15-20 thousand on his treatment and they used to keep him tied with the rope. She has further stated that it is true that the accused used to beat the family members and the villagers and once the accused in the fit of insanity had thrown his uncle's daughter in the well and since they are poor persons, they could not afford further treatment of the accused. The same thing has been stated by PW-8 Ganesh.	

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मामला क्रमांक Cr.A. 1396/94 **सन् ~~200~~**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12. Therefore, there is ample evidence to hold that the accused was suffering from insanity, otherwise there was no reason for him to assault his own father with axe. The manner in which the accused assaulted his father itself indicates that he was suffering from insanity at the time of commission of the crime in question. 13. For the foregoing reasons, we are of the considered opinion that the finding of the trial Court rejecting the plea of insanity of the accused, cannot be sustained. The accused has been able to discharge the burden of proving the fact that the he was suffering from insanity at the time of commission of the offence as per provisions of Section 105 of the Indian Evidence Act and therefore, he is entitled for the benefit of provisions of Section 84 of the IPC. 14. In the result, the appeal succeeds and the same is allowed. Conviction of the accused/appellant under section 302 of the IPC and the resultant sentence imposed on him by the trial Court are set aside. He is directed to be set at liberty forthwith if not required in any other case. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge Khan	

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